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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1953

No. 331

SINCLAIR DAVIS,
E. V. "DOC" SCHULTZ,
LOYD MARTIN PITCH, Being Jointly, Severally and as Representatives of a Class Similarly Situated, ... Appellants,

vs.

CITY OF BOWLING GREEN, KENTUCKY, a Second Class City in the Commonwealth of Kentucky, WATER-SEWER AND SANITATION COMMISSION of Bowling Green, Kentucky, Composed of JACK HOLLAND, HENRY CALDWELL, FRED AUSTIN, P. J. DUNAR, C. C. COLEMAN and LEONARD GEDDEUX, Chairman (Sued Individually, as Official Members and as a Political Subdivision), ... Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT,
FOR THE WESTERN DISTRICT OF KENTUCKY,
CIVIL ACTION No. 468, BOWLING GREEN, KY.

JURISDICTIONAL STATEMENT.

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WESTERFIELD-TRUE CO., INCORPORATED, LOUISVILLE, KY.

STATEMENT OF QUESTION INVOLVED.

The people of Bowling Green, Kentucky were denied the right to vote by referendum on a $10,000,000.00 water-sewer bond issue and debt, which right of vote was guaranteed by Section 157, Kentucky Constitution, when the debt created exceeds the annual income of the city, as in the instant case. The question, therefore, is whether such denial of the right to vote on debt limitation is a violation of the federal civil rights of the appellants and their class; whether it is a violation of the 14th and the 15th Amendment guarantees and whether it is a violation of the Guaranty Clause (Art. 4, Sec. 4) of the United States Constitution?

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IN THE

Supreme Court of the United States

October Term, 1963

No. _____

SINCLAIR DAVIS,
R. V. "BOB" SCHULTZ,
LOYD MARTIN FINCH, Suing Jointly, Severally and as Representatives of a Class Similarly Situated, - - - - *Appellants,*

v.

CITY OF BOWLING GREEN, KENTUCKY, a Second Class City in the Commonwealth of Kentucky,
WATER-SEWER AND SANITATION COMMISSION of Bowling Green, Kentucky, Composed of JACK HOLLAND, EMORY CARDWELL, FRED AUSTIN, P. P. DUMAS, C. C. COLEMAN and LEONARD HILDRETH, Chairman (Sued Individually, as Official Members and as a Political Subdivision), - *Appellees.*

APPEAL FROM THE UNITED STATES DISTRICT COURT, FOR THE WESTERN DISTRICT OF KENTUCKY, CIVIL ACTION No. 933, BOWLING GREEN, KY.

JURISDICTIONAL STATEMENT.

THE OPINION AND JUDGMENT BELOW.

(a) The federal district court below did not deliver an opinion. Its "FINDINGS OF FACTS AND CONCLUSIONS OF LAW", from which appeal is taken, is in the Appendix. There is no official nor unofficial report thereof.

JURISDICTION.

(b) The jurisdiction of the United States Supreme Court is vested and invoked upon the following grounds:

(i) Defendant-appellees (city and the commission) by Ordinance Numbers 766, 775, 776 (filed as original exhibits with the record) enacted a Ten Million ($10,000,000.00) Dollar bonded indebtedness against city property as collateral security and obligated the people to pay therefor by compulsion of penalty for the purpose of improving, replacing, refinancing old debts, facilities and expanding the present water-sewer system in Bowling Green, Kentucky.

The qualified voters of the City of Bowling Green were denied the "*right of election*" and the "*right to vote*" on the Ten Million Dollar bonded indebtedness, which "rights" were secured, protected and "*guaranteed*" to them by *Section 157, Kentucky Constitution*, to-wit.

> "*Sec. 157. Tax Rate; indebtedness; submission of question to Voters—*
>
> ". . . *No* county, *city*, town, taxing district, or other municipality, *shall be authorized* or permitted *to become indebted, in any manner* or for any purpose, *to an amount exceeding the annual income*, in any year, *without the assent of two-thirds of the voters thereof, voting at an election* to be held for that purpose; and any indebtedness contracted in violation of this section shall be *void.*"

The amount of the bonded indebtedness proposed far exceeds the annual income of the city. In fact,

the annual income of the city in 1962 was a fraction over one million dollars; and of course, the bonded indebtedness is Ten Million Dollars.

Defendant-appellees passed said ordinances and the $10,000,000.00 bonded indebtedness by virtue of Kentucky Revised Statutes 58.010 to 58.140 inclusive (set forth in the Appendix), which states that such indebtedness is not an obligation of the people nor the city but the water-sewer commission, an agency of the city, which only mortgages city property as collateral and that the same is not an "indebtedness" as meant in the Constitution of Kentucky.

The ordinances provide compulsory rates and compulsory connections by the property owners with a penalty for failure to do so from $2.00 to $5.00 dollars per day fine and punishment. Payment of the $10,000,000.00 bonded issue is not only a debt and obligation of the people so created by the city ordinance, but so far-reaching that it is a misdemeanor crime.

Appellants seek to enjoin the enforcement of state statutes (K.R.S. 58.010 to 58.140 inclusive) and the said ordinances enacted thereunder and for a declaration of their rights.

In consequence to the denial of the right to vote and the right of election as guaranteed to the appellants, and their class, by the Kentucky Constitution when the debt limit is exceeded, as instigated by the appellees, appellants invoke that it is a violation in turn of their federal rights under and by virtue of the following federal laws, to-wit:

Title 28 U.S.C.A. 2201, "Declaratory Judgments—Creation of Remedy"—

"In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."

Title 28 U.S.C.A. 2281, "Injunction against enforcement of State Statute; three-judge court required"—

"An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under Section 2284 of this title."

Title 28 U.S.C.A. 1343, "Civil Rights and elective franchise"—

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

". . . (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege

or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;"

(4) To recover damages or *to secure equitable* or other relief under any Act of Congress providing for the protection of civil rights, *including the right to vote.*"

14th Amendment, Sec. I, United States Contitution—

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

14th Amendment, Sec. V, United States Constitution—

"The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

15th Amendment, Sec. I, United States Constitution—

"The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

15th Amendment, Sec. II, United States Constitution—

"The Congress shall have power to enforce this article by appropriate legislation."

Title 42 U.S.C.A. 1981, "Equal Rights under the law"—

"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses and exactions of every kind, and to no other."

Title 42 U.S.C.A. 1982, "Property rights of citizens"—

"All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property."

Title 42 U.S.C.A. 1983, "Civil Action for Deprivation of Rights"—

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

Title 42 U.S.C.A. 1984, "Same; review of proceedings"—

"All cases arising under the provisions of this act in the courts of the United States shall be re-

viewable by the Supreme Court of the United States, without regard to the sum in controversy, under the same provisions and regulations as provided by law for the review of other causes in said court."

Title 42 U.S.C.A. 1988, "Proceedings in vindication of civil rights"—

"The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; . . ."

(ii) The judgment sought to be reviewed was dated and entered May 20, 1963; there was no order respecting a rehearing; The "Notice of Appeal" was filed June 5th, 1963 in the United States District Court, Western District of Kentucky, at Bowling Green, Kentucky.

(iii) **Statutory Provisions Believed to Confer on This Court Jurisdiction are:**

Title 28 U.S.C.A. 1253, "Direct Appeals from decisions of three-judge courts"—

"Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by an Act of Congress to be heard and determined by a District Court of three judges."

Title 28 U.S.C.A. Rule 72 (Rules of Civil Procedure), "Appeal from a district court to the Supreme Court"—

"When an appeal is permitted by law from a district court to the Supreme Court of the United States, an appeal shall be taken, perfected, and prosecuted pursuant to law and the Rules of the Supreme Court of the United States governing such an appeal."

Appellants appeal to the United States Supreme Court by virtue of 28 U.S.C.A. "Rules", "The revised rules of the Supreme court," Rules 10 to 18 inclusive.

(iv) **Cases and Authority Believed to Sustain the Jurisdiction of the Supreme Court are:**

In *Baker* v. *Carr* (1962), 369 U. S. 186, 82 S. Ct. 691, the city voter became a fractional-voter compared to the rural areas. The reason was legislative inaction to reapportion and action in non-compliance with state constitutional requirements. It was confirmed for decades by reason of the "judicial abnegation", which effect upheld the wrong and resulted in violation of the "equal protection" and a denial of a republican form of government (guaranty clause) to the people.

Analogy is presented that the people of Bowling Green, Kentucky, were "*guaranteed*" the right of election and vote on local debt limitation but denied these rights by state statutes "K.R.S. 58.010 to 58.140 inclusive" and the city ordinances (Nos. 766, 775, 776) enacted thereunder.

The state statute is "state action" *per se* because K.R.S. 58.010(3) provides:

> "Governmental Agency" means the Commonwealth of Kentucky as such acting by or through any department, instrumentality or agency thereof, or any county, city, agency or instrumentality or other political subdivision of the Commonwealth, or agency, or instrumentality thereof."

The "right to vote" and the "right of election" in Kentucky state and local affairs are integral parts of the local system of a Republic in Kentucky. The federal forefathers declared in the United States Constitution a "guaranty clause" (Article 4, Section 4) which reads, "The United States shall guarantee to every state in this Union a republican form of government."

In obedience and in concert with the federal constitutional mandate, the Kentucky constitutional forefathers "guaranteed" the "right to vote" and the "right of election" on local debt limitation by enacting Section 157, Kentucky Constitution, which provides that no city "in any manner" can create debts beyond its annual income without a vote of the people. Thus, this "right to vote" on debt limitation is a component part of our system of a state Republic. It was secured to protect the people from "unlimited debt", just as much as they were protected by the Kentucky Bill of Rights to have freedom of worship, speech and assembly. In fact, Section 157 is the Kentucky Bill of

Rights to protect the free people from unlimited debt without their consent. And it is just as important to have the right to vote upon debt limitation, as it is to vote for officials.

The power of debt is the power to ruin. The state constitutional forefathers made the restraint against "unlimited debt" without a vote of the people a part of our way of life, our system as a republic; because, as history proves, we were but the composite of refugees from debtor prisons in Europe—there was a historic fear of the curse of debt—such as the Roman law provided death for the failure to pay debts or exile beyond the Tiber.

The state legislative circumvention or devise to avoid the Kentucky constitutional guarantee to the people from unlimited local debt is contained in these words:

> *KRS 58.040—*
>
> ". . . The bonds shall be payable solely from the revenue derived from the public project and shall not constitute an indebtedness of the state, county, city or political subdivision within the meaning of the Constitution. It shall be plainly stated on the face of each bond that it has been issued under the provisions of KRS 58.010 to 58.140 and that it does not constitute an indebtedness of the governmental agency within the meaning of the Constitution."

Criminal compulsion to pay the debt by the people is contained in the following provision thereof:

Ordinance No. 776, Section 5:

"Any person . . . violating any of the provisions of the ordinance, or failing or refusing to comply with same, whether or not he, she or it shall be the owner or the occupant of the property involved, shall be *fined* not less than two dollars ($2.00) nor more than five ($5.00) with court costs for each offense. *Each day* that such person, firm, partnership or corporation fails or refuses to connect the sewage from any property owned or occupied by him, her or it, with the combined and consolidated municipal waterworks and sewer system shall constitute a separate offense and shall be subject to the *penalty* herein prescribed for each offense."

The Ordinance creating the debt is simply not a debt created free of the obligation of the people to pay. But to the contrary, it far-reaches into such an obligation of the people that compulsory penalties and fines are imposed for failure of the people to "connect" to the system or failure to pay the rates. The "legislative devise" which circumvents the constitutional guarantee is not just a revenue statute or a debt created to be paid if the enterprise is successful with pledged public property as security or collateral; but rather it has such propensities of force in payment that it is a crime of the people not to pay the debt created by the legislative devise!

Appellants insert the theory of *Monroe* v. *Pape* (1961), 365 U. S. 167, 81 S. Ct. 473, 5 L. Ed. 492, as applicable also in this matter.

Since 1926 the State Court of Appeals of Kentucky has, under state law, upheld the validity of KRS 58.010 to 58.140 as not being violative of the Kentucky Constitution Sections 157 and 158; see *Dunn* v. *City of Murray*, 208 S. W. 2d 309; *McKinney* v. *Owensboro*, 203 S. W. 2d 24; *Bowling Green* v. *Kirby*, 295 S. W. 1004, 220 Ky. 839. In all state cases, the federal question imposed herein was never alleged nor commented upon.

(v) **Validity of State Statute Involved.**

Appellants seek to enjoin the enforcement of Kentucky Revised Statutes 58.010 to 58.140 inclusive as being legislative devise to circumscribe the federal and state constitutional guarantees of the right to vote by the citizenry on debt limitations.

(vi) **Questions Presented by This Appeal.**

Where the Kentucky Constitution, Section 157, clearly "guarantees" the right to vote and the right of election to the people on the creation of debts by the city or its political subdivision, which exceed the annual income of the city, as in the instant case, and state statute (KRS 58.010 to 58.140 inclusive) permits a city or its political subdivision to exceed the limit without a vote of the people by pledging public property as collateral, the bonds payable only from the revenue received from the enterprise, *i. e.*, the water-sewer rates and charges, and the people are compelled by compulsion of fine and punishment to pay both the connection

fees and the monthly rates so charged, is this violative of appellants, and their class, federal civil rights by such "*legislative devise*" which avoids the right to vote so guaranteed?

Is such legislative devise and the ordinances enacted thereunder, which avoid the right to vote, a violation of *Title 28 U.S.C.A. 1343, Sections 3 and 4, Title 42 U.S.C.A. 1981, 1982, 1983, 1984, 1988;* and the *14th Amendment* ("due process", "equal protection" and "privileges and immunities") *Section 1 thereof;* and is such action violative of the *15th Amendment, Section 1* and further, is such denial of the right to vote, which is an integral part of our Kentucky republican form of government, in turn, a violation too of the federal constitutional mandate (Article 4, Section 4, United States Constitution) which assures that each republican form of government in the various states of the Union shall be protected, secured and guarded?

Is it violative of such civil rights and federal and state constitutional protections when the state highest court by "judicial abnegation" destroys the right to vote? Appellants say that the "right to vote" when once granted and guaranteed by both constitutions, the federal and state, it must always supersede the "police power" of a state if we are to remain a democracy. It is when the "police power" supersedes the "right to vote" that dictatorship prevails, as in Cuba and Russia.

Next, subsequent to the judgment of the three-judge constituted Court below, a suit was filed in state court by *Ada Parsley* v. *The City of Bowling Green*

involving the same subject matter, wherein the appellants intervened. Judgment is adverse to appellants herein. Copy of the state judgment is in the Appendix. It is contended and a question for decision by the Supreme Court that if the appellants' rights of vote and election have been so deprived, then the appropriate writs or remedies should be issued by the Supreme Court to enjoin the state officials from enforcing said state court judgment. *Shelley* v. *Kraemer,* 334 U. S. 1, 68 S. Ct. 836, 92 L. Ed. 1161 (1948); *Hurd* v. *Hodge,* 334 U. S. 24, 68 S. Ct. 847, 92 L. Ed. 1187 (1948).

SUBSTANTIAL QUESTION INVOLVED.

The issue in this case is of great national importance, one which will determine to a certain degree the future local municipal bond market. This case involves a large sum itself, *i. e.,* $10,000,000.00; but that is little compared to the daily amounts of municipal bonds being floated throughout the nation, wherein, they probably have been tested with "friendly test" suits for validity, none have encompassed the question of civil rights herein alleged in regard to a bond issue. The appellants say the questions presented are substantial and bona fide; that it was an abuse of discretion for the lower court to confirm the denial of the right to vote secured to the appellants, and their class, by both the State and Federal constitutions and that unless this case is decided and determined upon its merits, the entire local municipal bond market nation-

wide will be affected in the future by virtue of the "doubt" as to their validity concerning federal questions and further, because state courts are without the power to bind federal courts on questions involving the violation of civil rights secured under Acts of Congress and the United States Constitution; and that it is, in fact, imperative upon the Supreme Court to decide and determine this case upon its merits and to write an opinion as to its decision in order to clarify the contentions. The issue in this case has never been determined. And because of the national importance of the effect of the issuance of local municipal bonds daily throughout the country on the economy of the country, the Supreme Court should allow the presentation of Briefs and have Oral Argument and note jurisdiction of this case.

Further, many state constitutions, as does the Kentucky Constitution, provide that illegal and unlawful acts thereunder cannot later be ratified, assumed nor made legal by subsequent legislation; therefore, the opinion and decision of the Supreme Court in this case is of such magnitude that it might affect the validity of BILLIONS BEYOND BILLIONS of municipal local bonds previously sold and issued.

Wherefore, appellants plead the Supreme Court to reverse the judgment of the Court below, and give direction to sustain the "Findings of Fact and Conclusions of Law" presented by the appellants, and that judgment be so entered declaring said ordinances unconstitutional and violative of the rights of appellants

and with appropriate Writs of Prohibition against state officials from enforcing the provisions of the state court judgment referred to.

Respectfully submitted,

SINCLAIR DAVIS,
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One of the Appellants.

Of Counsel:

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Louisville, Kentucky,

MARION VANCE,
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Glasgow, Kentucky.

Proof of Service.

Sinclair Davis, one of the appellants, certifies that on July 26th, 1963 he served the foregoing Jurisdictional Statement by mailing a copy through the United States Mails, postage prepaid, to the respective defendants and counsel of record, to-wit: (1) On the City of Bowling Green, Kentucky to Hon. G. D. Milligan, City Solicitor and Attorney for said city, and its Mayor, Hon. Bob Graham at Bowling Green, Kentucky; (2) On the Water-Sewer and Sanitation Commission by copy to its members individually and its Attorney of record, Hon. Chas. Reynolds, all at Bowling Green, Kentucky; (3) on the Commonwealth of Kentucky by copy unto Hon. Bert Combs, Governor and Hon. John Breckinridge, Attorney General, thereof at Frankfort, Kentucky. This affidavit is made pursuant to Rule 33 (3) (c), Rules of the Supreme Court of the United States.

Sinclair Davis

SINCLAIR DAVIS,
One of the Appellants.

Subscribed and sworn to before me this July 26th, 1963 by Sinclair Davis to be true and correct.

C. L. Bell

Notary Public, State at Large, (Kentucky)
Com. exp's: June 7th 1965

(Seal)

APPENDIX ONE.

IN THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

Bowling Green Civil Action No. 933

Sinclair Davis, Et Al., - - - - Plaintiffs,

v.

Water-Sewer and Sanitation,
Commission or Commissioners
of Bowling Green, Kentucky, Etc., - - Defendants.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT.

This case having been submitted on defendants' motion to dismiss on the pleadings, exhibits, oral stipulation of counsel and argument of counsel, the court hereby adopts the following findings of fact and conclusions of law:

FINDINGS OF FACT

I. The plaintiffs are citizens, residents, voters, taxpayers, and consumers of services of the water and sewer utilities of Bowling Green, Kentucky.

Stipulation of Counsel.

II. The General Council, the legislative body of the City of Bowling Green, enacted Ordinances Nos. *775, 776 and 766* for the purpose of defraying the cost of the construction of a public project; to-wit, the expansion of the sewer system, sewer treatment plant, water system and water pumping stations.

Stipulation of Counsel Exhibits.

III. In order to finance the above public project, revenue bonds were to be issued and sold which bonds were to be retired from revenue derived from the sale of utility services to be rendered by the municipality.

Exhibits.

IV. These bonds were revenue producing bonds as authorized by Chapter 58 of Kentucky Revised Statutes.

Chapter 58, Kentucky Revised Statutes.
Exhibits.

V. The authorization for the issuance and proposed sale of these bonds was not submitted for determination by a vote of the people.

Stipulation of counsel.

VI. The sole issue of the case is whether the issuance of revenue producing bonds under the provisions of Chapter 58 of Kentucky Revised Statutes is violative of the provisions of Sections 157 and 158 of the Kentucky Constitution and the provisions of the United States Constitution, specifically amendments V, XIV and XV of the United States Constitution.

Stipulation of counsel.

CONCLUSIONS OF LAW

I. The issuance of revenue producing bonds under Chapter 58 of Kentucky Revised Statutes is not violative of the provisions of Sections 157 and 158 of the Kentucky Constitution.

Dunn et al v. City of Murray, 208 S. W. 2d 309, 306 Ky. 426.

McKinney v. City of Owensboro, 203 S. W. 2d 24, 305 Ky. 253.

City of Bowling Green v. Kirby, 295 S. W. 1004, 220 Ky. 839.

Francis v. City of Bowling Green, 82 S. W. 2d 804, 259 Ky. 525.

Veail v. City of Louisville and Jefferson County Metropolitan Sewer District, 197 S. W. 2d 413.
Perkins v. City of Frankfort, 276 S. W. 2d 449.
Skidmore v. City of Elizabethtown, 291 S. W. 2d 3.
Klein v. City of Louisville, 6 S. W. 2d 1104.
Grimm v. Maloney, 358 S. W. 2d 496.
Burkholder v. City of Louisville, 276 S. W. 2d 29.
Hill v. City of Providence, 211 S. W. 2d. 846.
Walker v. City of Maysville, 220 S. W. 2d 92.
City of Hazard v. Salyers, 224 S. W. 2d 420.
Williams v. City of Barbourville, 246 S. W. 2d 591.

II. The ordinances authorizing the issuance and sale of the revenue bonds are not arbitrary or discriminatory and are a valid exercise of the police power of the City of Bowling Green in the protection of the welfare and health of its citizens.

City of Bowling Green v. Kirby, 295 S. W. 1004.
Francis v. City of Bowling Green, 82 S. W. 2d 804.

III. The privilege to vote on state or local issues is within the jurisdiction of the state, to be exercised as the state may direct and upon such terms as it may deem proper, provided that the laws relating thereto are not unreasonable or arbitrary and there is no discrimination between individuals, and provided the privilege is not refused on account of race, color or previous conditions of servitude.

Pope v. Williams and Harper, 24 Sup. Ct. 573, 48 L. Ed. 817.

Morey v. Doud, 77 Sup. Ct. 1344.

IV. Rates fixed by the municipality for services rendered by a municipally owned utility does not deprive the user of property of his rights under the law, nor it is a taking without due process of law, but is a matter of public policy for the legislature since the property owner re-

ceives a special benefit from the construction of the sewer, water lines and plants in the privilege of making use of them.

Carson v. Sewer Commission of Brocton, 182 U. S. 398, 21 Sup. Ct. 860.

V. Chapter 58 of Kentucky Revised Statutes is not violative of the provisions of amendments V, XIV and XV of the United States Constitution.

Citations Supra.

VI. The issuance and sale of the revenue bonds by the City of Bowling Green for the construction of sewer system and water system expansions, the construction of sewer treatment plant and pumping stations without a vote of the people is valid, reasonable and nondiscriminatory, and a proper exercise of the police power of the city within the provisions of the constitution of the United States and the State of Kentucky.

Citations Supra.

JUDGMENT.

It is ordered and adjudged that defendants' motion to dismiss be sustained and plaintiffs' complaint is hereby dismissed at plaintiffs cost.

(s) Hon. Shackelford Miller, Jr.,
United States Circuit Judge,
Sitting by Designation.

(s) Hon. Mac Swinford,
United States District Judge.

(s) Hon. Henry L. Brooks,
United States District Judge.

APPENDIX TWO.

Kentucky Revised Statutes (K.R.S.) Sections 58.010 to 58.140 Inclusive.

K.R.S. 58.010 Definitions.

"As used in KRS 58.010 to 58.140, unless the context requires otherwise:

(1) 'Public Project' means any lands, buildings, or structures, works or facilities suitable for and intended for use as public property for public purposes or suitable for and intended for use in the promotion of the public health, public welfare or the conservation of natural resources, including the planning of any such lands, buildings, structures, works or facilities, and shall also include existing lands, buildings, structures, works and facilities, as well as improvements or additions to any such lands, buildings, structures, works or facilities." (1958 c 150. Eff. 6-19-58. 1946 c 126 Sec. 1.)

(2) 'Public Project' as defined herein shall include projects intended for use as public property for public purposes by another governmental agency, including the United States Government, other than the governmental agency acquiring the land or constructing the building, structure or facility. (1958 c 150. Eff. 6-19-58).

(3) 'Governmental Agency' means the Commonwealth of Kentucky as such acting by or through any department, instrumentality or agency thereof, or any county, city, agency or instrumentality or other political subdivision of the Commonwealth, or agency, or instrumentality thereof." (1958 c 150. Eff. 6-19-58. 1946 c 126, Sec. 1.)

K.R.S. 58.020 Power of governmental agency to acquire or develop public project and issue revenue bonds.

"A governmental agency acting separately or jointly with one or more of any such agency, may acquire, con-

struct, maintain, add to and improve any public project as defined in KRS 58.010, which public project may be located within or without or partly within and partly without the territorial limits of such governmental agency or agencies and for the purpose of defraying the cost thereof may borrow money and issue negotiable revenue bonds. Before any department or agency of the state government shall borrow money and issue bonds under KRS 58.010 to 58.140, the head of the department or agency shall file with the Secretary of State a written order, approved by the Governor, the Attorney-General and the Commissioner of Finance, setting forth the proposed public project, the amount of the bonds to be issued, and the maximum rate of interest the bonds are to bear. Any governmental agency other than agencies of the state government may borrow money and issue revenue bonds under KRS 58.010 to 58.140 pursuant to an order, resolution or ordinance of its legislative or administrative body, which order, resolution or ordinance shall set forth the proposed public project, the amount of the revenue bonds to be issued and the maximum rate of interest. In every instance the order, resolution or ordinance shall provide that the public project is being undertaken under the provisions of KRS 58.010 to 58.140." (1946, c 126, section 2). (1948 c 226. Eff. 6-17-48).

K.R.S. 58.030 Interest rate and maturity of bonds; leasing of project; acceptance of donations and government aid.

"(1) The bonds may be issued to bear interest at the rate not to exceed six percent per annum, payable either annually or semiannually, and shall be executed in such manner and be payable at such times not exceeding forty years from date thereof and at such place or places as the governmental agency determines. (1948 c 226. Eff. 6-17-48. 1946 c 126 Sec. 3.)

"(2) The bonds may provide that they or any of them may be called for redemption prior to maturity or in-

terest payment dates not earlier than one year from the date of issuance of the bonds, at a price not exceeding 103 and accrued interest, under conditions fixed by the governmental agency before issuing the bonds. (1948 c. 226. Eff. 6-17-48. 1946 c 126 Sec. 3).

"(3) Any governmental agency is authorized to rent or lease such public project or any portion thereof to any persons, partnerships, associations or corporations either public or private. (1948 c 226. Eff. 6-17-48. 1946 c 126, Sec. 3).

"(4) A governmental agency is hereby empowered to accept donations or gifts to the public project from any source and to accept appropriations and grants to the public project from the Federal Government or any agency thereof and appropriations from the state or any county, city or other political subdivision and, at the option of the governmental agency, to pledge such donations, gifts or appropriations to the payment of revenue bonds issued to finance the cost of a public project." (1946 c 126 section 3.) (1948 c 226. Eff. 6-17-48.)

K.R.S. 58.040 Bonds negotiable and tax free; method of sale; interest yield; payable solely from revenue.

"Bonds issued pursuant to KRS 58.010 to 58.140 shall be negotiable and shall not be subject to taxation. If any officer whose signature or countersignature appears on the bonds or coupons ceases to be such officer before delivery of the bonds, his signature or countersignature shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until delivery. The bonds shall be sold in such manner and upon such terms as the governmental agency deems best, or any contract for the acquisition of a public project may provide that payment shall be made in such bonds. In no event shall any bonds be negotiated on a basis to yield more than six percent, except as provided in subsection (2) of KRS 58.030. *The bonds shall*

be payable solely from the revenue derived from the public project and shall not constitute an indebtedness of the state, county, city or political subdivision within the meaning of the Constitution. It shall be plainly stated on the face of each bond that it has been issued under the provisions of KRS 58.010 to 58.140 and that it does not constitute an indebtedness of the governmental agency within the meaning of the Constitution." (1946 c 126, Sec. 4. Eff. June 19, 1946).

(above emphasis is 'ours').

K.R.S. 58.050 Application of proceeds of bonds.

"All money received from the bonds shall be applied solely for the acquisition, construction, maintenance or improvement of the public project, and the necessary expense of preparing printing and selling said bonds, or to advance the payment of the interest on the bonds during the first three years following the date of the bonds." (1946 c 126, Sec. 5. Eff. June 19, 1946).

K.R.S. 58.060 Receiver. "If there is any default in the payment of principal or interest of any bond, any court having jurisdiction of the action may appoint a receiver to administer the public project on behalf of the governmental agency, with power to charge and collect rents, royalties, fees, rates and charges and to receive any other available revenue sufficient to provide for the payment of any bonds or obligations outstanding against the public project, and for the payment of operating expenses, and to apply the income and revenue in conformity with KRS 58.010 to 58.140 and the order, resolution or ordinance referred to in 58.020." (1946 c 126, Sec. 6. Eff. June 19, 1946).

K.R.S. 58.070 Maintenance, operating and depreciation funds; rentals, rates and charges.

"At or before the issuance of bonds the governmental agency shall, by order, resolution or ordinance, set aside

and pledge the income and revenue of the public project including rents, royalties, fees and proceeds of sales of property and from rates and charges for services derived from or rendered by the public project into a separate and special fund to be used and applied in payment of the cost thereof and in the maintenance, operation and depreciation thereof. The order, resolution or ordinance shall definitely fix and determine the amount of revenue necessary to be set apart and applied to the payment of principal and interest of the bonds, and the properties of the balance of the income and revenue to be set aside as a proper and adequate depreciation account, and the remaining proportion of such balance shall be set aside for the reasonable and proper operation and maintenance of the public project. The rents, royalties, fees, rates and charges for the services or sale of the public project shall be fixed and revised from time to time so as to be sufficient to provide for payment of interest upon all bonds and to create a sinking fund to pay the principal thereof when due, and to provide for the operation and maintenance of the public project and an adequate depreciation account." (1946 c 126, Sec. 7. Eff. June 19, 1946).

K.R.S. 58.080. Transfer of surplus to depreciation account.

"If a surplus is accumulated in the operating and maintenance funds equal to the cost of maintaining and operating the public projects during the remainder of the calendar, operating or fiscal year, and during the succeeding like year, any excess over such amount may be transferred at any time by the governmental agency to the depreciation account, to be used for improvements, extensions or additions to the public project." (1946 c 126, Sec. 8. Eff. June 19, 1946).

K.R.S. 58.090. Expenditure and investment of depreciation fund.

"The funds accumulating to the depreciation account shall be expended in balancing depreciation in the public project or in making new constructions, extensions or additions thereto. Any such accumulations may be invested as the governmental agency may designate, and if invested the income from such investment shall be carried into the depreciation account." (1946 c 126, Sec. 9. Eff. June 19, 1946).

K.R.S. 58.100. Refunding bonds.

"The governmental agency may issue new bonds to provide funds for the payment of any outstanding bonds, in accordance with the procedure prescribed by KRS 58.010 to 58.140. The new bonds shall be secured to the same extent and shall have the same source of payment as the bonds refunded." (1946 c 126, Sec. 10. Eff. June 19, 1946).

K.R.S. 58.110. Additional Bonds.

"If the governmental agency finds that the bonds authorized will be insufficient to accomplish the purpose desired, additional bonds may be authorized and issued in the same manner."

K.R.S. 58.120 Bonds for extensions and improvements.

"Any governmental agency acquiring and public project pursuant to the provisions of KRS 58.010 to 58.140 may, at the time of issuing the bonds for such acquisition, provide for additional bonds for extensions and permanent improvements to be placed in escrow and to be negotiated from time to time as proceeds for that purpose may be necessary. Bonds placed in escrow shall, when negotiated, have equal standing with bonds of the same issue."

K.R.S. 58.130 Use of General Funds or Revenues for Public Project.

"Any governmental agency may use, for the purpose of acquiring, constructing, maintaining, extending or improving a public project, or for the payment of interest or principal on any revenue bonds issued by the agency pursuant to KRS 58.010 to 58.140, any funds or tax revenues available for general purposes of the agency and not required by law to be devoted to some other purpose."

K.R.S. 58.140 Condemnation.

"In the event a governmental agency is unable to acquire, by purchase or agreement, any real property deemed necessary for the purposes of a public project, such agency may acquire the same by condemnation. The procedure for condemnation shall be as provided in KRS 416.010 to 416.080, or as provided in KRS 416.120, whichever procedure is selected by the agency."

APPENDIX THREE.

No. 5718

Ada Parsley, - - - - - - - Plaintiff,

v.

City of Bowling Green, et al., - - Defendants.

JUDGMENT.

This cause being submitted to the Court on pleadings, proof, argument of counsel and briefs, and the Court being advised, it is ordered and adjudged that plaintiff's complaint, amended complaint and the intervening complaint be dismissed.

APPENDIX

The Court having rendered a written opinion, including Findings of Fact and Conclusions of Law dated June 5, 1963, it is ordered that said Findings of Fact and Conclusion of Law and the Memorandum Opinion of the Court be filed as a part of this record and be made a part of this judgment as though copied in full herein.

It is further ordered that the Findings of Fact, Conclusions of Law and Judgment of the U. S. District Court for the Western District of Kentucky in Civil Action 993, styled Sinclair Davis, et al. v. City of Bowling Green, and Water, Sewer and Sanitation Commission of the City of Bowling Green be filed as part of this record and adopted as part of this judgment as though copied in full herein.

It is further ordered and adjudged that Ordinances #766, 775, and 776 were duly enacted by the General Council of the City of Bowling Green and are valid ordinances, in no way violative of any provision of the Kentucky or Federal Constitutions.

It is further ordered and adjudged that the revenue bonds provided for by the ordinances of the City above referred to are not direct obligations of the City and do not contravene Section 157 or 158 of the Constitution of the State of Kentucky, and are not direct obligations of the municipality, but are obligations based solely on revenues of this public project within the meaning of Chapter 58 of Kentucky Revised Statutes.

It is further ordered and adjudged by the Court that it was not necessary to submit the issuance of these bonds by referendum to a vote of the people.

It is further ordered and adjudged that the rates provided for by the City of Bowling Green for services rendered and to be paid by those who use the public project, which is the subject matter of this action, are not confiscatory or arbitrary, but are within the discretion of the

General Council and are reasonable based upon the facts as shown in the record.

It is further ordered and adjudged that the provisions of said ordinances requiring users of the old sewer system to pay additional fees or compensation for the construction of the new sewer system is not unreasonable or arbitrary, since it is clearly shown by all the proof in this record that the general health and safety of the entire city is directly involved.

It is further ordered and adjudged that the lowest bidder after due advertisement for the construction of the sewer system was the American Contractors, Inc. It further appearing in connection therewith that upon the opening of said bids and upon furnishing all bids to the Chester Engineers for examination and recommendation it was immediately discovered that the American Contractors, Inc. the lowest bidder, had made a mistake in arithmetic, and it is the finding of the Court, based upon all the proof in this record, that said mistake in the bid was honestly made and without fraud or evil purpose, and it is further adjudged that the General Council properly and legally sustained the motion of the low bidder to correct the mistake, and which corrected bid is still the lowest bid of all the bids upon the project.

It is further ordered and adjudged that it is within the discretion and authority of the General Council to permit this correction and if it so desires to finally accept the bid of the American Contractors, Inc. for its corrected amount and to issue the bonds as provided in the above mentioned ordinances.

It is further ordered and adjudged that the motion of the intervenors to stay the proceedings in this case until an appeal can be prosecuted from the judgment of the U. S. District Court is hereby overruled.

The defendants may recover their costs of the plaintiff and the intervening plaintiffs.

This June 5, 1963.

(s) Jno. B. Rodes,
Judge, Warren Circuit Court.

State of Kentucky }
County of Warren }

I, John P. Hanes, Clerk Warren Circuit Court, do hereby certify that the foregoing is a true and correct copy of the final Judgement in the above styled cause as appears of record in my office.

This July 19, 1963.

(s) John P. Hanes, Clerk,
Warren Circuit Court.

(Seal)